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Economic and Social Council

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Provisional summary record of the 9th meeting
Held at Headquarters, New York, on Tuesday, 26 April 2011, at 10 a.m.

President: Mr. Kapambwe ..... (Zambia)

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The meeting was called to order at 10.15 a.m.

Adoption of the agenda and other organizational matters (*continued*) (E/2011/L.4, E/2011/L.5, E/2011/L.6, E/2011/L.7 and E/2011/L.8)

1. **The President** drew attention to the draft proposals submitted by the President of the Council and members of the Bureau on the basis of informal consultations held pursuant to paragraph 2 (l) of Council decision 1988/77 (E/2011/L.1).

Draft decision E/2011/L.4: Multi-year programme of work for the annual ministerial reviews of the Economic and Social Council for the period 2012-2014

2. *Draft decision E/2011/L.4 was adopted.*

Draft resolution E/2011/L.5: Report of the Committee of Experts on Public Administration on its ninth session

3. *Draft resolution E/2011/L.5 was adopted.*

Draft decision E/2011/L.6: Theme for the item on regional cooperation of the 2011 substantive session of the Economic and Social Council

4. *Draft decision E/2011/L.6 was adopted.*

Draft decision E/2011/L.7: Theme for the humanitarian affairs segment of the 2011 substantive session of the Economic and Social Council

5. *Draft decision E/2011/L.7 was adopted.*

Draft decision E/2011/L.8: Appointment of additional members of the Ad Hoc Advisory Group on Haiti

6. **Mr. Morrill** (Canada), speaking as chairperson of the Ad Hoc Advisory Group on Haiti, said that France had joined the Advisory Group, which would be visiting Haiti once the newly elected President had formed his Government.

7. **Ms. Dumont** (France) said that her country had requested to join the Advisory Group because of its long-standing and close relationship with Haiti and its belief that the recent presidential and legislative elections would pave the way for political stability and development in that country.

8. *Draft decision E/2011/L.8 was adopted.*

Basic programme of work of the Council (*continued*) (E/2011/76)

9. **Mr. Trepelkov** (Director, Financing for Development Office, Department of Economic and Social Affairs), introducing the report of the Secretary-General entitled "Strengthening of institutional arrangements to promote international cooperation in tax matters, including the Committee of Experts on International Cooperation in Tax Matters" (E/2011/76), said that while each country was responsible for its tax system, it was important to enhance international cooperation in addressing international tax matters.

10. Due to its universal membership and legitimacy, the United Nations had a key role to play in that process, in particular through its Committee of Experts on International Cooperation in Tax Matters. That Committee was responsible for, among other things, reviewing and updating the United Nations Model Double Taxation Convention between Developed and Developing Countries and the Manual for the Negotiation of Bilateral Tax Treaties between Developed and Developing Countries. It also provided a framework for dialogue with a view to enhancing and promoting cooperation among national tax authorities, and gave special attention to developing countries and countries with economies in transition in dealing with their tax-related matters.

11. While the work of the Committee overlapped somewhat with that of the International Monetary Fund and the World Bank, it differed in many respects from that of the Organization for Economic Cooperation and Development (OECD). Although the United Nations Model Tax Convention and that of the Organization for Economic Cooperation and Development both sought to prevent double taxation, the United Nations Model preserved a greater share of tax revenue in the country where investment or other activity took place, while the OECD Model preserved a greater share in the country of the investor or trader. The United Nations Model also reflected a wide variety of perspectives, realities and priorities and adopted a globally inclusive approach in addressing international tax matters. Those differences validly reflected the different memberships and priorities of the two organizations.

12. While there was general agreement that the Committee performed an important role, there was little agreement as to its possible conversion into an intergovernmental body. Three options had therefore

been suggested for strengthening institutional arrangements. The first option was to maintain the status quo, but to make efforts to enhance the effectiveness of existing arrangements, including the methods of work of the Committee of Experts. The second option was to create a global, all-inclusive body for international tax cooperation at the United Nations, which would have universal legitimacy and authority. The third option was to combine the first two options.

13. Lastly, while it was not possible to estimate resource requirements for the second and third options without specifying the membership, working methods and other details relating to such a body, it was clear that additional resources would be required, regardless of the option chosen.

14. **Ms. Bethel** (Bahamas), speaking on behalf of the Caribbean Community, said that there was a need for a universal forum for coordination of international tax matters that would be based on truly democratic principles and would give developing countries a level playing field. The Caribbean Community therefore supported the conversion of the Committee of Experts into an intergovernmental subsidiary body of the Economic and Social Council. Such a body would have universal legitimacy and authority, allowing developing countries to be involved in discussions of tax matters and advance towards sustainable development. Member States should also address the inadequate resources provided to the current Committee, which had hampered its functioning and its ability to provide capacity-building and technical assistance to developing countries.

15. Option 1 amounted to maintaining the status quo, under which the Committee's reach, influence and authority were circumscribed and the Trust Fund for International Cooperation in Tax Matters had difficulty garnering contributions; that option was therefore unacceptable. The Council should examine options 2 and 3, including their budgetary implications; option 1 would also require additional funding but would not provide any of the benefits of the other options. Her delegation envisioned a Committee that would remain expert in nature and would function like the Statistical Commission.

16. A crossroads had been reached: the United Nations must play its proper role in cooperation in tax matters for the benefit of developed and developing countries alike in their common pursuit of sustainable development and the achievement of the Millennium Development Goals. The Economic and Social Council must rise to the challenge or risk being labelled short-sighted and stagnant.

17. **Mr. Zimonyi** (Hungary), speaking on behalf of the European Union; the candidate countries Croatia, Montenegro, the former Yugoslav Republic of Macedonia and Turkey; the stabilization and association process countries Albania and Serbia; and, in addition, Georgia and the Republic of Moldova, said that only 6 of the 32 Member States that had made submissions had proposed upgrading the Committee of Experts to an intergovernmental body. The majority, including the European Union member States, had recommended prudence concerning an initiative that might be seen as competing with existing institutions rather than aiming for better international cooperation and had advocated enhancing synergies with other international forums, in particular with OECD. Therefore, only option 1 should be considered further.

18. European Union development policy supported developing countries in designing efficient and cooperative tax systems. Broader participation of those countries in existing structures would bolster their efforts to tackle tax evasion and other harmful practices. At the same time, cooperation between OECD, the Committee of Experts, the International Tax Dialogue and the International Tax Compact should be enhanced, taking into account the needs and capacities of developing countries.

19. Before Member States considered creating new structures, they should assess comprehensively whether the existing Committee and its subcommittees — which had just recently been established — were functioning as effectively as possible. They should also explore how to improve cooperation among international forums that pursued similar objectives, especially when developing international standards, to ensure that the needs of different countries were met. The Council should also examine how the Committee of Experts cooperated with such regional forums as the African Tax Administration Forum, the Inter-American Center of Tax Administrations, International Monetary Fund regional centres and related initiatives such as the Extractive Industries Transparency Initiative.

20. Lastly, the European Union was concerned at the increased resource commitments that would be entailed

by all of the proposed options, and in particular options 2 and 3.

21. **Mr. Glucksman** (United States of America) said that the current Committee of Experts had for decades been an ad hoc group of experts that met regularly and produced reports, much as it did currently. Member States had agreed only a few years earlier to upgrade it to an expert committee and to expand its membership. That decision had been reached with difficulty and had rested on a narrow consensus. Now, just a short time later, proposals were being made to upgrade the body to a norm-setting commission without proper consideration of the effectiveness of the existing structure and how its work might be improved. His delegation opposed the proposals.

22. The focus of the report and its disjointed conclusions were disappointing. Member States' submissions had reflected no consensus on upgrading the status of the Committee, yet two of the proposals called for just that. The report should have more properly focused on areas where agreement might be reached. A more pragmatic approach would begin with an informed discussion of the working methods and effectiveness of the existing Committee and what measures, if any, should be taken to improve it.

23. **Ms. Volken** (Switzerland), said that her delegation was in favour of option 1 because the Committee's current form, in which its members acted in their own capacity and worked on updating United Nations models and providing commentaries, was an effective way of cooperating with developing countries in international tax matters. Needs should be clarified before the Committee's form and mandate were altered, while duplication should be avoided by taking into account the work under way, including that of OECD, which had great expertise in fiscal matters, and of the Global Forum on Transparency and Exchange of Information for Tax Purposes, which included developing countries in activities aimed at improving information exchange. The OECD informal working group on taxation and development was an effective instrument that provided training and resources for developing countries and related projects. The United Nations and OECD should contemplate cooperation within that group that would allow all parties to make the best use of their key competencies.

24. **Mr. Hart** (Observer for Barbados) said that actions that had far-reaching consequences for developing countries must be taken with their full cooperation, which in turn required that they should participate fully in rule-making and norm-setting processes as a matter of right, not of privilege. It was a matter of great concern that, despite the commitment made in the Monterrey Consensus of the International Conference on Financing for Development to develop a more participatory approach to international decision-making, most developing countries, and in particular the smallest, still had no right of access to bodies that dealt with matters critical to their economic development. Global issues required an international response by all countries. Some had suggested that OECD was best placed to guide global tax cooperation, but it was unfair for OECD to dictate policies that bound non-member States who had no input into the rules; the current undemocratic arrangement was untenable.

25. His delegation supported the conversion of the Committee into an intergovernmental commission based on the submission by the Group of 77, which represented 130 countries. The central goal of the proposed commission would be to give developing countries an effective voice in decision-making on international tax matters. It was ironic that some who were calling for continuation of the status quo had failed to give the current Committee of Experts the resources it needed to discharge its original mandate.

26. **Ms. Griesgraber** (Observer for the New Rules for Global Finance Coalition) said that the secretariat of the Committee of Experts worked hard to produce high-quality results. She commended the German Development Agency, which provided grants to allow tax officials from developing countries to attend courses on tax treaty negotiations. The African Tax Administration Forum and the Inter-American Center of Tax Administrations were eager to coordinate with the United Nations body, particularly on capacity-building. The United Nations was inclusive of everyone and worked with OECD and regional organizations. The Committee of Experts lacked resources: it was shameful to note that the secondment of two people by Norway had doubled the secretariat staff. The Committee's competence could not be compared with that of OECD when there was such a disparity between their staff and resources. A global rule-making body would require additional resources.

27. **Mr. Spencer** (Observer for the Tax Justice Network) said that the Tax Justice Network supported

the upgrading of the Committee of Experts under option 2 or 3, the dedication of substantial additional resources to United Nations work on international cooperation in tax matters and greater involvement of developing countries in that work. It should be recalled that several significant developing countries had, in their submissions, favoured the establishment of a commission under option 3.

28. **Ms. Adams** (United Kingdom) said that the current arrangements for international tax cooperation presented significant advantages. Member States should focus on improving the existing arrangements before setting up new bodies or upgrading structures.

29. **Mr. Vasiliev** (Russian Federation) said that the issue of institutional enhancement to improve international cooperation in tax matters required further review, particularly in the light of the ongoing discussion on improving the follow-up mechanism for activities in financing for development and the discussion to take place at the next session of the General Assembly on enhancing the Organization's role in global financial and economic management. Future work should focus on areas on which there was consensus, such as regional and inter-agency cooperation.

30. His delegation was not prepared to support intergovernmental status for the Committee of Experts as such a reform might politicize the new body, which would render it less effective.

31. **Mr. Meetarbhan** (Mauritius) said that he endorsed the views of the Caribbean Community. In other forums, discussions of international cooperation in tax matters focused on only one aspect: exchange of information. Certain jurisdictions were often pressured to amend their legislation to remove judicial safeguards that required tax officials to seek court orders before responding to requests for information. That was one example of what happened when norms were prescribed by organizations with limited membership and specific political objectives. Discussion of tax matters within a universal organization would allow for broader consideration of substantive issues rather than a narrow focus on procedures for information exchange.

32. In other forums, there was always a risk of international cooperation becoming forced cooperation, where pressure was exerted on smaller jurisdictions and financial centres — under threat of blacklisting or other sanctions — to adopt measures that might make them less competitive than other financial centres. It was therefore important that issues of international cooperation on tax matters should take place within a universal organization. The United Nations body would not compete with limited membership organizations — which had considerable experience of cooperation and would continue their work — but would act as an apex body for all issues relating to international cooperation in tax matters. The Council should therefore consider option 2 or 3.

33. **Mr. Adler** (Canada) said that the report, which regrettably focused on whether the Committee of Experts should be upgraded into an intergovernmental body, presupposed that such a body was needed. An opportunity had been missed to look critically at the effectiveness of the current structure and ways to improve the Committee's functioning and otherwise enhance international cooperation in tax matters.

34. Rather than focusing on the creation of new entities, there was scope for greater cooperation among existing bodies and for ensuring that resources were used more effectively. The case had not been made that the uncertain benefits of option 2 or 3 would justify the cost. Those options did not appear to be favoured by the majority of Member States that had made submissions. His delegation favoured option 1, with the proviso that any request for additional resources should be accompanied by analysis of the precise purpose of the funds being sought.

35. **Mr. Dance** (NGO Committee on Financing for Development and Observer for Passionists International) said that discussions of taxation and its reform should be geared towards development. He commended the Financing for Development Office on the quality and volume of its work considering its limited resources.

36. In light of the current crises and general turbulence, a new way forward was needed, and to achieve that the international community should exercise imagination rather than caution. The regular use in such discussions of the words "coherence", "cooperation" and "consistency" indicated that the inclusiveness of the United Nations was vital in that area; all countries should have an equal place at the table. The NGO Committee would strongly support the Committee's conversion to an intergovernmental commission.

37. **Mr. Paul** (Global Policy Forum) said that Global Policy Forum, which had worked on development-related tax issues for more than a decade, was concerned that States were losing billions in revenue through an inability to collect taxes due to factors such as transfer pricing, negative tax competition and related problems. Better transparency, cooperation, coordination and harmonization were needed for the improvement of overall tax collection, in order to contribute to essential State functions and mobilize resources for development. Universal input into that process through the United Nations was vital, and required strengthening the resources and institutions available within the Organization.

38. **Mr. Suárez Salvia** (Argentina), speaking on behalf of the Group of 77, said that strengthening international cooperation in tax matters would help support national efforts aimed at improving domestic public resources, while taking into account the need to enhance the fiscal capacity and policy space of developing countries. While each country was responsible for its own tax system, enhanced international and multilateral cooperation would help provide support mechanisms for national efforts to make tax administration and policies more efficient. The United Nations was the only true global forum and the development agenda of other forums was skewed in favour of their constituents, the developed countries.

39. As it had in 2010, the Group of 77 and China therefore urged Member States to consider the conversion of the United Nations Committee of Experts on International Cooperation in Tax Matters into an intergovernmental subsidiary body of the Economic and Social Council, making it an inclusive, participatory mechanism for dialogue on international tax issues that would not infringe on Member States' sovereignty.

40. **Mr. Warraich** (Pakistan) said that his delegation was still evaluating the report (E/2011/76), but for the time being associated itself with Argentina's remarks on behalf of the Group of 77. The statement by the Bahamas on behalf of the Caribbean Community merited serious consideration, particularly where strengthening the United Nations role in economic governance and making the Committee inclusive were concerned.

41. **Ms. Lin** (Australia) said that while the Bahamas and Argentina had presented legitimate arguments, she agreed that initiatives aimed at strengthening the work of the existing Committee should be more fully explored. Australia, as stated in its original submission, continued to support option 1.

42. **Mr. Trepelkov** noted that the previous year's resolution (2010/33) had been intended to provide an opportunity for members to conduct a detailed discussion on international cooperation on tax matters in preparation for the Council's substantive session.

The meeting rose at noon.